

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 24, 2002]
[Document not affected by Public Laws enacted between
January 24, 2002 and December 19, 2002]
[CITE: 5USC3109]

TITLE 5--GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III--EMPLOYEES

Subpart B--Employment and Retention

CHAPTER 31--AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I--EMPLOYMENT AUTHORITIES

Sec. 3109. Employment of experts and consultants; temporary or
intermittent

(a) For the purpose of this section--

(1) ``agency'' has the meaning given it by section 5721 of this
title; and

(2) ``appropriation'' includes funds made available by statute
under section 9104 of title 31.

(b) When authorized by an appropriation or other statute, the head
of an agency may procure by contract the temporary (not in excess of 1
year) or intermittent services of experts or consultants or an
organization thereof, including stenographic reporting services.
Services procured under this section are without regard to--

(1) the provisions of this title governing appointment in the
competitive service;

(2) chapter 51 and subchapter III of chapter 53 of this title;
and

(3) section 5 of title 41, except in the case of stenographic
reporting services by an organization.

However, an agency subject to chapter 51 and subchapter III of chapter
53 of this title may pay a rate for services under this section in
excess of the daily equivalent of the highest rate payable under section
5332 of this title only when specifically authorized by the
appropriation or other statute authorizing the procurement of the
services.

(c) Positions in the Senior Executive Service or the Federal Bureau
of Investigation and Drug Enforcement Administration Senior Executive
Service may not be filled under the authority of subsection (b) of this
section.

(d) The Office of Personnel Management shall prescribe regulations
necessary for the administration of this section. Such regulations shall
include--

(1) criteria governing the circumstances in which it is
appropriate to employ an expert or consultant under the provisions
of this section;

(2) criteria for setting the pay of experts and consultants
under this section; and

(3) provisions to ensure compliance with such regulations.

(e) Each agency shall report to the Office of Personnel Management on an annual basis with respect to--

(1) the number of days each expert or consultant employed by the agency during the period was so employed; and

(2) the total amount paid by the agency to each expert and consultant for such work during the period.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 416; Pub. L. 95-454, title IV, Sec. 402(b), Oct. 13, 1978, 92 Stat. 1160; Pub. L. 97-258, Sec. 3(a)(4), Sept. 13, 1982, 96 Stat. 1063; Pub. L. 100-325, Sec. 2(b), May 30, 1988, 102 Stat. 581; Pub. L. 102-378, Sec. 2(8), Oct. 2, 1992, 106 Stat. 1347.)

Historical and Revision Notes

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 55a.	Aug. 2, 1946, ch. 744, Sec. 15, 60 Stat. 810.

In subsection (a), the definitions of ``agency'' and ``appropriation'' are added on authority of the Act of Aug. 2, 1946, ch. 744, Sec. 18, 60 Stat. 811.

In subsection (b), the words ``the provisions of this title governing appointment in the competitive service'' are substituted for ``the civil-service laws''. The words ``chapter 51 and subchapter III of chapter 53 of this title'' are substituted for the reference to the classification laws which originally meant the Classification Act of 1923, as amended. Exception from the Classification Act of 1949 is based on sections 202(27) and 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 956, 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Amendments

1992--Subsecs. (d), (e). Pub. L. 102-378 added subsecs. (d) and (e).

1988--Subsec. (c). Pub. L. 100-325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1982--Subsec. (a)(2). Pub. L. 97-258 substituted ``section 9104'' for ``section 849''.

1978--Subsec. (c). Pub. L. 95-454 added subsec. (c).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-454 effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415 of Pub. L. 95-454, set out as an Effective Date note under section 3131 of this title.

Appropriations Relating to Labor, Health and Human Services, and
Education; Public Disclosure of Consulting Service Through Procurement
Contract

Pub. L. 102-394, title V, Sec. 501, Oct. 6, 1992, 106 Stat. 1825, provided that: ``The expenditure of any appropriation under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title V, Sec. 501, Nov. 26, 1991, 105 Stat. 1140.
Pub. L. 101-517, title V, Sec. 501, Nov. 5, 1990, 104 Stat. 2220.
Pub. L. 101-166, title V, Sec. 501, Nov. 21, 1989, 103 Stat. 1189.
Pub. L. 100-202, Sec. 101(h) [title V, Sec. 501], Dec. 22, 1987, 101 Stat. 1329-256, 1329-287.
Pub. L. 99-500, Sec. 101(i) [H.R. 5233, title V, Sec. 501], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, Sec. 101(i) [H.R. 5233, title V, Sec. 501], Oct. 30, 1986, 100 Stat. 3341-287.
Pub. L. 99-178, title V, Sec. 501, Dec. 12, 1985, 99 Stat. 1132.
Pub. L. 98-619, title V, Sec. 501, Nov. 8, 1984, 98 Stat. 3332.
Pub. L. 98-139, title V, Sec. 501, Oct. 31, 1983, 97 Stat. 898.
Pub. L. 97-377, title I, Sec. 101(e)(1) [title V, Sec. 501], Dec. 21, 1982, 96 Stat. 1878, 1904.

Availability of Appropriations for Services

Pub. L. 102-394, title V, Sec. 503, Oct. 6, 1992, 106 Stat. 1825, provided that: ``Appropriations contained in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, available for salaries and expenses, shall be available for services as authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102-170, title V, Sec. 503, Nov. 26, 1991, 105 Stat. 1140.
Pub. L. 101-517, title V, Sec. 503, Nov. 5, 1990, 104 Stat. 2221.
Pub. L. 101-166, title V, Sec. 503, Nov. 21, 1989, 103 Stat. 1189.
Pub. L. 100-202, Sec. 101(h) [title V, Sec. 503], Dec. 22, 1987, 101 Stat. 1329-256, 1329-287.
Pub. L. 99-500, Sec. 101(i) [H.R. 5233, title V, Sec. 503], Oct. 18, 1986, 100 Stat. 1783-287, and Pub. L. 99-591, Sec. 101(i) [H.R. 5233, title V, Sec. 503], Oct. 30, 1986, 100 Stat. 3341-287.
Pub. L. 99-178, title V, Sec. 503, Dec. 12, 1985, 99 Stat. 1132.
Pub. L. 98-619, title V, Sec. 503, Nov. 8, 1984, 98 Stat. 3333.
Pub. L. 98-139, title V, Sec. 503, Oct. 31, 1983, 97 Stat. 899.
Pub. L. 97-377, title I, Sec. 101(e)(1) [title V, Sec. 503], Dec. 21, 1982, 96 Stat. 1878, 1904.

Appropriations Relating to Energy and Water Development; Public
Disclosure of Consulting Service Through Procurement Contract

Pub. L. 102-377, title V, Sec. 504, Oct. 2, 1992, 106 Stat. 1342, provided that: ``The expenditure of any appropriation under this Act or subsequent Energy and Water Development Appropriations Acts for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, hereafter shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive Order issued pursuant to existing law.''

Section Referred to in Other Sections

This section is referred to in sections 595, 3161, 5102, 7342, 8474 of this title; title 2 sections 136c, 179t, 1108, 1161, 1553, 1742; title 3 sections 105, 106, 107, 108; title 6 sections 391, 392; title 7 sections 16, 2225a; title 10 section 129b; title 12 section 2405; title 15 sections 205i, 634d, 636, 2206, 2218, 2451, 4105, 4805, 7305; title 16 sections 410cc-36, 410ww-24, 410yy-8, 410ccc-22, 460zz-2, 469b, 469j, 470m, 825q-1, 1052, 1406; title 18 sections 3153, 3168, 4204, 4352; title 19 sections 1331, 2171; title 20 sections 959, 1018a, 1087-2, 1098, 1505, 2012, 2106, 3413, 3425, 3462, 3463, 3702, 4355, 4414, 4513, 4710, 5608, 5708, 5933, 9252; title 21 sections 1305, 1703; title 22 sections 272a, 277d-3, 280b, 280i, 280k, 290b, 290f, 290h-5, 1469, 1474, 1622d, 2024, 2083, 2102, 2103, 2386, 2512, 2581, 2669, 2905, 3106, 4308, 4341, 4832, 6204, 6435a; title 25 sections 640d-11, 2707, 3505; title 26 section 7802; title 28 sections 530C, 602, 625, 994; title 29 sections 656, 671, 676, 783, 1302; title 30 section 1807; title 31 sections 332, 731, 1352, 5112; title 33 section 1123; title 36 sections 2304, 2307; title 38 section 7281; title 40 sections 311, 6923, 8711; title 41 section 422; title 42 sections 242b, 242l, 282, 285a-2, 285b-3, 290aa, 299c-5, 300v-2, 904, 1320b-9, 1962a-4, 1975b, 2286b, 2473, 3211, 3788, 4276, 4343, 5149, 5612, 5816, 5852, 6616, 7171, 7233, 7385o, 10163, 10248, 10267, 10412, 11314, 12651f, 14196, 15324; title 43 section 377b; title 44 sections 2105, 2706, 3319; title 47 section 154; title 49 sections 106, 323, 1113, 40122, 45301; title 50 section 2402; title 50 App. section 2158.